

UNITED STATES DISTRICT COURT  
Northern District of California

CHERIE A. EDWARDS

Plaintiff(s),

v.

ROBERT A. ZIGLER

Defendant(s).

No. C 09-03248 MEJ

**ORDER DENYING AS MOOT  
DEFENDANT'S MOTION TO  
DISMISS**

Pending before the Court is Defendant's Motion to Dismiss. (Dkt. #9.) However, on August 24, 2009, Plaintiff filed an Amended Complaint. Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading once "as a matter of course" at any time before a responsive pleading is served. "A motion to dismiss is not a 'responsive pleading' within the meaning of Rule 15." *Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1130 n. 3 (9th Cir. 2000). Thus, where a motion to dismiss is filed instead of an answer, Rule 15(a) allows a plaintiff to amend the original complaint once without obtaining permission from the court. An "amended complaint supersedes the original, the latter being treated thereafter as non-existent." *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.1997).

Here, Defendant did not file an answer, but instead filed a motion to dismiss. As no prior amended complaints have been filed, Plaintiff was entitled to file an amended complaint as a matter of course under Rule 15(a). The amended complaint supersedes the original complaint, and the original complaint is treated as non-existent. Since Defendant's motion is based on Plaintiff's original and now "non-existent" complaint, Defendants' motion is now moot. Accordingly, the Court hereby DENIES Defendant's motion as moot. Defendant shall file an answer or other responsive pleading within 30 days from the date of this Order.

Further, the Court instructs Plaintiff that no further amendments may be made without seeking leave of Court pursuant to Rule 15 and Civil Local Rule 7. Any attempt to file an amended complaint without proper notice to Defendant under Civil Local Rule 7 and a court order shall be stricken.

**IT IS SO ORDERED.**

Dated: August 27, 2009

  
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Maria-Elena James  
Chief United States Magistrate Judge